

Dissenting Views to Accompany  
H.R. 2934, the “Terrorist Penalty Enhancement Act”

These views dissent to the Committee Report on H.R. 2934, the “Terrorist Penalty Enhancement Act”. This bill provides for a massive expansion of the federal death penalty, both for crimes that supporters of the death penalty might think warrant the death penalty, as well as crimes many may not expect to be associated with this most severe of penalties. The bill creates 23 new death penalties by making all 43 “federal crimes of terrorism” under 18 U.S.C. 2332b(g)(5) death penalty eligible, if a death results in the commission of any one of them. Currently, 20 of the 43 crimes are death penalty eligible, if death results.

And this bill does not limit crimes for death penalty eligibility to heinous offenses or those severe enough to require either a death penalty or life without parole. In addition to deaths that occur as a result of a direct intent to murder, maim, kidnap, destroy a nuclear facility or other such heinous crimes, crimes such as financial or other material support to terrorists or terrorist organizations, and protection of computers, are also included. And they are included whether these crimes occur in the context of an effort to violently overthrow the government or terrorize people, or in a context of protest against government policies considered despicable. If a death results, even if it was not a specifically intended result, anyone who was involved in committing, or who attempted or conspired to commit one of the covered offenses, would be death penalty eligible.

Several of the added crimes of terrorism are so broad that they could cover civil disobedience activities by a diverse group of protest organizations, such as Operation Rescue, Greenpeace, and the anti-globalization movement, should a death result from illegal protest activities, particularly since attempts and conspiracies to commit these crimes are also death penalty eligible. Bombarding an abortion clinic or government computer with spam to shut a particular activity down as a protest to affect changes in abortion or war policies and practices is illegal and should be punished, but should not carry a potential death sentence to those who participated in the act, or planned or attempted it, should an unintentional death result in conjunction with such crimes.

Some recognition of these concerns was accorded by the Committee through its passage of two amendments. One amendment eliminated the “catch-all” expansion of the death penalty to be applicable to virtually any felony if a death results and it could be placed under the broad definitions of international or domestic terrorism. The other amendment removed from death penalty eligibility under the bill the provision under 2332(b)(g)(5) which makes it a crime to cause “injury to buildings or property” under federal control. While this is some recognition and some improvement, the bill still allows what are relatively minor crimes to result in a death penalty prosecution should a death occur, albeit it unintentional. The provisions of this bill create a death penalty liability tantamount to a federal “felony murder” rule. This presents constitutional issues as to the appropriateness of the death penalty under these circumstances.

The bill provides too much latitude for abusive prosecutions. The Attorney General, who ultimately approves death penalty cases, has issued a broad directive to federal prosecutors to pursue the most severe penalties, including more death penalties. With the broad expansion of